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In the Supreme Court of the United States

KATHLEEN SEBELIUS, ET AL.,
Petitioners.

v.

HOBBY LOBBY STORES, INC., ET AL.,
Respondents.

CONESTOGA WOOD SPECIALTIES CORP., ET AL.,
Petitioners,

v.

KATHLEEN SEBELIUS, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Tenth and Third Circuits

BRIEF OF *AMICI CURIAE* WOMEN'S PUBLIC POLICY GROUPS AND A COALITION OF FEMALE STATE LEGISLATIVE AND EXECUTIVE BRANCH OFFICIALS IN SUPPORT OF NONGOVERNMENT PARTIES

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INTEREST OF AMICI[1]

Amici are united by their concern for women's public policy issues.

In the spirit of the original suffragettes, **Susan B. Anthony List** works for the election of candidates who champion life and oppose abortion. Its members share the conviction of Alice Paul, author of the 1923 Equal Rights Amendment, that "Abortion is the ultimate exploitation of women."

Charlotte Lozier Institute is the education and policy arm of the Susan B. Anthony List. Named after a 19th century feminist physician who, like Susan B. Anthony, championed women's rights without sacrificing either equal opportunity or the lives of the unborn, the Institute studies federal and state policies and their impact on women's health and on child and family well-being.

Concerned Women for America is the nation's largest public policy women's organization. It is committed to promoting laws that reflect Biblical principles in public policy, and among these are the principles of religious liberty, that each human life—at every stage of development—is imbued with unique dignity and value, and that in a civil society, everyone

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[1] No counsel for a party authored this brief in whole or part, and no one other than *Amici Curiae* or their members or their counsel made a monetary contribution to the preparation or submission of this brief. Respondents in Case No. 13-354 have consented to the filing of this brief. Counsel of record for all other parties to these actions have filed with the Clerk consents to the filing of *amicus curiae* briefs.

is called to care for the welfare of others, including women seeking abortions.

The **Coalition of State Legislative and Executive Branch Officials** is composed of female state-level legislators and one executive official. These public officials share a commitment to promoting wise public policies that advance the health and safety of women and protect the religious freedom of all people. The public officials constituting this coalition are named individually in an Appendix to this brief.

SUMMARY OF THE ARGUMENT

(1) *The Mandate is a socially reckless policy that increases the national division surrounding abortion.*

For nearly two generations, the nation has debated the "profound moral and spiritual implications," *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 850 (1992), of abortion on demand. Fatigued with the contentious and controversial nature of the abortion issue, many individuals would "call[] the contending sides of [this] national controversy to end their national division." *Id.* at 867.

The federal law under challenge in this case (the "Mandate") goes in precisely the opposite direction. By forcing conscientiously opposed individuals and organizations to participate in abortion, the Mandate transforms abortion culture wars into abortion conscience wars and ushers in a new and "troublesome era in the history of our Nation." *Id.* at 1001 (Scalia, J., concurring in the judgment in part and dissenting in part).

The socially reckless character of the Mandate is further demonstrated by its departure from a long- and well-established tradition of protecting abortion conscience rights in federal law.

(2) *Women are not a monolithic class of self-interested voters who universally value free abortion drugs more than religious freedom and limited government.*

The Mandate is said to be a pro-woman measure that advances women's interests. Opposition to the Mandate is often characterized as a "war on women."

Many women are offended by this "war on women" rhetoric. No one person, and certainly not the Government, speaks for the interests of all women, and the Mandate cannot be generalized as a measure that advances the interests of all women.

The Mandate advances the interests of only that subset of women who value free abortion drugs above public goods such as religious freedom and limited government. The Mandate works against the interests of those free-minded, independent women whose personal, moral, and political values lead them to support a different balance of policy considerations.

As demonstrated by the presence of female plaintiffs in nearly a third of the more than forty-five cases that have been filed against the Mandate by for-profit parties, the Mandate also works against the interests of women who wish to own or operate businesses according to their own values.

ARGUMENT

The nongovernment parties in these actions challenge a regulation (the "Mandate") promulgated under the Patient Protection and Affordable Care Act that violates their religious freedom by forcing them to participate in abortion. *See* Br. for Resp'ts on Pet. for a Writ of Cert. at 4–5, Sebelius v. Hobby Lobby Stores, Inc., No. 13-354 (U.S. Oct. 21, 2013) ("Br. For Resp'ts"); Br. for Pet'r at 3–6, Conestoga Wood Specialties Corp. v. Sebelius, No. 13-356 (U.S. Jan. 10, 2014). The nongovernment parties explain that the Mandate forces them to violate religious beliefs by covering in health insurance plans devices and drugs that can prevent an embryo from implanting in the womb. *See* Br. for Resp'ts, *supra*, at 3–6; Br. for Pet'r, *supra*, at 1–5. The nongovernment parties believe that abortion occurs when an embryo is prevented from implanting in the womb, yet federal law imposes significant financial penalties if they refuse to cover drugs and devices that can do just that. *See* Br. for Resp'ts, *supra*, at 3, 5–6; Br. for Pet'r, *supra*, at 3–6, 8.

The nongovernment parties ably explain why being forced to participate in abortion violates federal laws protecting their religious freedom. *Amici* submit this brief to bring the following two matters to the Court's attention. First, by transforming the abortion conflict into a religious freedom conflict, the Mandate heedlessly increases the national division surrounding abortion and departs from a long- and well-established national tradition of respecting abortion-related conscience rights. Second, the Mandate should not be characterized as a "pro-woman" or "gender equality" measure in any general sense of those terms. No one

person speaks for all women on these issues, many women oppose the Mandate, and women have as much an interest in religious freedom as anyone else.

I. The Mandate Is a Socially Reckless Policy that Increases the National Division Surrounding Abortion.

By forcing conscientious objectors to participate in abortion, the Mandate transforms abortion "culture wars" into abortion "conscience wars." The socially reckless character of the Mandate is further demonstrated by its departure from a long- and well-established tradition of protecting abortion-related conscience rights in federal law.

A. The Mandate Transforms Abortion "Culture Wars" into Abortion "Conscience Wars".

For nearly two generations, the nation has debated the "profound moral and spiritual implications," *Planned Parenthood*, 505 U.S. at 850, of abortion on demand. Fatigued with the "contentious" and "controversial" nature of the abortion issue, *Stenberg v. Carhart*, 530 U.S. 914, 947 (2000) (O'Connor, J., concurring), many individuals would "call[] the contending sides of [this] national controversy to end their national division," *Planned Parenthood*, 505 U.S. at 867.

The Mandate goes in precisely the opposite direction. By forcing conscientiously opposed individuals and organizations to participate in abortion, the Mandate transforms abortion "culture wars" into abortion "conscience wars," Thomas M. Messner, *From Culture Wars to Conscience Wars:*

Emerging Threats to Conscience, Heritage Foundation (Apr. 13, 2011),[2] and ushers in a new and "troublesome era in the history of our Nation," *Planned Parenthood*, 505 U.S. at 1001 (Scalia, J., concurring in the judgment in part and dissenting in part).

In discussing abortion, this Court has repeatedly invoked the concept of freedom from governmental intrusion in the choices of private citizens. *See id.* at 851 (opinion of the Court) (explaining that the Court's "cases recognize the right . . . to be free from unwarranted *governmental intrusion* into matters so fundamentally affecting a person as the decision whether to bear or beget a child" (emphasis added and internal quotation marks omitted)); *Maher v. Roe*, 432 U.S. 464, 471 (1977) (explaining that *Roe v. Wade* "[drew] on a group of disparate cases restricting *governmental intrusion*, physical coercion, and criminal prohibition of certain activities" (emphasis added)). The abortion right, as declared by this Court, is freedom from government intrusion in the choice to have an abortion. The abortion right is not a right to support for abortion from the government, *see Webster v. Reprod. Health Servs.*, 492 U.S. 490, 511 (1989) (citing cases that "support the view that the State need not commit any resources to performing abortions"), much less a right to command support for abortion from other private citizens, *see infra* Section I.B (providing federal laws protecting conscience in abortion context).

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[2] *Available at* http://www.heritage.org/research/reports/2011/04/from-culture-wars-to-conscience-wars-emerging-threats-to-conscience.

Without adding anything to the freedom from government intrusion invoked in this Court's abortion decisions, the Mandate directly intrudes on the choice *not* to participate in abortion by imposing financial penalties on employers that refuse to provide insurance coverage that includes drugs and devices that can cause abortion. This reshuffling of interests between private citizens as well as between private citizens and the government is significant: Not even the Government has an obligation to support abortion, and federal law has long protected the choice of private citizens not to participate in abortion, yet through the Mandate the Government now forces some private citizens to support abortion for other private citizens even if doing so violates religious beliefs.

By forcing private citizens to participate in abortion, the Government transforms what this Court has declared to be a constitutional freedom from government intrusion in the choice to participate in abortion into a government-enforced right to command support for abortion from other private citizens. In so doing, the Mandate turns the abortion debate upside down and guarantees that what is already "one of the most contentious and controversial [issues] in contemporary American society," *Stenberg*, 530 U.S. at 947 (O'Connor, J., concurring), will become only more contentious and controversial. In short, not only does the Mandate violate the religious freedom of the nongovernment parties in this case and other individuals and entities that are similarly situated, it does so in a way that recklessly increases national division and further polarizes an already very polarized society.

B. The Mandate Departs from a National Tradition of Protecting Conscience Rights in the Abortion Context.

The socially reckless character of the Mandate is further demonstrated by its departure from a long- and well-established tradition of recognizing the need for abortion-related conscience rights and protecting those rights in federal law.

In *Roe v. Wade*, for example, this Court cited abortion-related conscience protections embraced by the American Medical Association ("AMA"). *See* 410 U.S. 113, 143 & n.38 (1973). In describing the history of AMA viewpoints regarding abortion, the Court cited an AMA resolution that described abortion coldly as "'a medical procedure'" but also stated that "'[n]either physician, hospital, nor hospital personnel shall be required to perform any act violative of personally-held moral principles.'" *Id.* at 143 n.38. Similarly, in *Doe v. Bolton*, 410 U.S. 179, 197–98 (1973), the companion case to *Roe*, this Court cited abortion-related conscience protections provided by Georgia law. "These provisions obviously are in the statute," the Court wrote, "in order to afford appropriate protection to the individual and to the denominational hospital." *Id.* at 198; *see Chrisman v. Sisters of St. Joseph of Peace*, 506 F.2d 308, 312 (9th Cir. 1974) (discussing how state conscience protections factored into *Doe* decision).

Then, just months after this Court decided the *Roe* and *Doe* cases, Congress passed federal legislation commonly referred to as the Church Amendment, which protects abortion-related conscience rights of both individuals and institutions. *See* Health Programs Extension Act of 1973, § 401, Pub. L. No. 93-45, 87

Stat. 91, 95 (codified as amended at 42 U.S.C. § 300a-7 (2012)). Senator Ted Kennedy, who would become known for his vocal support of abortion rights, spoke in favor of the Church Amendment during debate in the Senate, *see* 119 Cong. Rec. 9601-02 (1973), and Members of Congress overwhelmingly supported the legislation, *see* 119 Cong. Rec. 9604 (1973) (Senate vote on Church Amendment as introduced in Senate was 92-1); 119 Cong. Rec. 17462-63(1973) (House vote on bill including generally similar but reworked conscience protection amendment was 372-1); 119 Cong. Rec. 18072 (1973) (Senate vote on House amendments to Senate bill, including amendment to conscience protection, was 94-0). In enacting the Church Amendment, "Congress quite properly sought to protect the freedom of religion of those with religious or moral scruples against . . . abortions." *Chrisman*, 506 F.2d at 312.

Since Congress passed the Church Amendment in 1973, the principle of conscientious objection has been repeatedly affirmed and, today, federal law contains several protections for rights of conscience in the context of abortion. *See* Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, div. H (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2014), tit. V (General Provisions), § 507(d)(1) (2014) (stating that "[n]one of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions"); *id.*, div. B

(Commerce, Justice, Science, and Related Agencies Appropriations Act, 2014), tit. ii (Department of Justice), § 203 (stating that "[n]one of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion"); 42 U.S.C. § 238n(a) (1996) (establishing that neither the Federal Government nor any State or local government that receives Federal financial assistance may "subject any health care entity to discrimination" on several bases related to not participating in abortion); 20 U.S.C. § 1688 (1988) (prohibiting a federal sex discrimination provision from being "construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion"); 42 U.S.C. § 2996f(b)(8) (2010) (restricting funds made available by the Legal Services Corporation from being used "to provide legal assistance with respect to any proceeding or litigation which seeks . . . to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution"); *see also* Mark L. Rienzi, *The Constitutional Right Not to Kill*, 62 EMORY L. J. 121, 147–52 (2012) (discussing federal abortion-related conscience protections); *Current Federal Laws Protecting Conscience Rights*, U.S. Conference of Catholic Bishops (July 2012) (providing text of several

federal abortion-related conscience protections along with explanatory notes and timeline).[3]

The Mandate violates the commonsense understanding reflected by these policies that, even as the public continues to debate the issue of abortion, conscientiously opposed citizens and institutions should not be forced to violate their beliefs.

* * *

The Court should protect religious freedom for the reasons set forth in the briefs submitted by the nongovernment parties. By protecting religious freedom, the Court will uphold a long tradition of respecting abortion conscience rights and prevent abortion "culture wars" from mushrooming into abortion "conscience wars."

II. Women Are Not a Monolithic Class of Self-Interested Voters Who Universally Value Free Abortion Drugs More than Religious Freedom and Limited Government.

The Government frames the Mandate as a policy designed to advance the interests of women. *See* Coverage of Certain Preventative Services Under the Affordable Care Act, 78 Fed. Reg. 39873, 39873 (July 2, 2013) (asserting regulatory interests in "public health" and "gender equity").[4] Indeed, opposition to the

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[3] *Available at* http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf.

[4] *Available at* http://www.gpo.gov/fdsys/pkg/FR-2013-07-02/pdf/2013-15866.pdf.

Mandate has sometimes been characterized as a "war on women."

However, many women are offended by the "war on women" rhetoric because it suggests all women think the same way on these issues. Many women oppose the Mandate. In addition, as demonstrated concretely by the many female plaintiffs challenging the Mandate in federal courts, women have just as much an interest in religious freedom as anyone else.

A. Many Women Are Offended by the "War on Women" Rhetoric Used to Describe Opposition to the Mandate.

The "war on women" rhetoric used to describe opposition to the Mandate "belittle[s] women's intellectual freedom to make up our own minds on the merits of ideas," Jennifer A. Marshall, *'War on women?' Beware the liberal hyperbole*, TwinCities.com (Mar. 29, 2012),[5] and is offensive to the many women "who do not want to be treated as a lump category whose thinking stops at our reproductive organs," Asma T. Uddin and Ashley McGuire, *It's about religious liberty, not birth control*, On Faith (Mar. 7, 2012).[6] On issues involving reproductive health in particular, it is both inaccurate and insulting to suggest that "all women are cut from the same political cloth," Kathryn Jean Lopez, *The War*

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[5] *Available at* http://www.twincities.com/ci_20276024/jennifer-marshall-war-women-beware-liberal-hyperbole.

[6] *Available at* http://www.faithstreet.com/onfaith/2012/03/07/beyond-the-war-on-women-its-about-religious-liberty-not-birth-control/11110.

on Men, Nat'l Rev. Online (Mar. 19, 2012),[7] or that the female "gender somehow thinks and votes as a monolithic block," Uddin & McGuire, *supra*.

Indeed, the time for "stereotyped notions of women's interests," *Cohen v. Brown Univ.*, 101 F.3d 155, 179 (1st Cir. 1996), is long past. As the renowned legal scholar and women's leader Helen Alvaré has explained, "[n]o one speaks for all women" on the kinds of issues raised by the Mandate, Helen M. Alvaré and Kim Daniels, *Open Letter to President Obama, Secretary Sebelius and Members of Congress*,[8] and more than 40,000 women have signed their names agreeing with that statement, *see id.* (click on "View the more than 40,000 Signatures").

B. Women Have as Much an Interest in Religious Freedom as Anyone Else. Women Have Been Named as Plaintiffs in Nearly a Third of the More than Forty-Five "For-Profit" Cases Filed Against the Mandate.

Given the wide range of viewpoints held by women on public policy issues including those raised by the Mandate, it should come as no surprise that many women oppose the Mandate. *See* WPA Opinion Research Poll (Dec. 6, 2013) (finding that "[a] majority

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[7] *Available at* http://www.nationalreview.com/articles/293740/war-men-kathryn-jean-lopez.

[8] *Available at* http://womenspeakforthemselves.com/ (last visited Jan. 27, 2014).

of women ages 18 to 54 (54%) oppose the Mandate");[9] *see also, e.g.*, Press Release, U.S. Congressman Diane Black, People Shouldn't Have to Choose Between Health Coverage and Conscience (Jan. 3, 2014);[10] Press Release, Concerned Women for America, Statement of Penny Young Nance on Justice Sonia Sotomayor's HHS Mandate Decision (Jan. 1, 2014).[11] In the words of one woman, the Mandate's attack on "the free exercise of religion . . . is a war on freedom that should concern all Americans, and particularly women." Jennifer A. Marshall, *The War on Women's Freedom*, The Foundry (Feb. 18, 2012).[12]

Women have as much an interest in religious freedom as anyone else, *see* Asma T. Uddin, Testimony before the Judiciary Comm. of the U.S. House of Representatives (Feb. 28, 2012) (testifying that "it is just as much in women's interest to protect [the] right [to religious freedom] as it is in men's"),[13] and not just as an important public good, but also as a vital

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[9] *Available at* http://downloads.frc.org/EF/EF13K71.pdf.

[10] *Available at* http://black.house.gov/press-release/case-you-missed-it-people-shouldnt-have-choose-between-health-coverage-and-conscience.

[11] *Available at* http://www.cwfa.org/statement-of-penny-young-nance-on-justice-sonia-sotomayors-hhs-Mandate-decision/#sthash.6R78ZvCU.dpuf.

[12] *Available at* http://blog.heritage.org/2012/02/18/the-war-on-womens-freedom/.

[13] *Available at* http://www.becketfund.org/wp-content/uploads/2012/02/Testimony-Oral-Asma-EMBARGOED.pdf.

individual and institutional freedom. For those women who own or operate businesses and object to participating in abortion, the threats posed by the Mandate are concrete and real: Of the more than forty-five cases that have been filed against the Mandate by for-profit parties, *see* The Becket Fund for Religious Liberty, HHS Mandate Information Central,[14] women have been named as plaintiffs in almost a third, *see* Br. for Resp'ts on Pet. for a Writ of Cert. at 1, *Sebelius v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 678 (2013) (No. 13-354) (stating that parties challenging the Mandate include Barbara Green, Darsee Lett, other family members, and "their family businesses"); First Am. Verified Compl. at ¶ 13, *Conestoga Wood Specialties Corp. v. Sebelius*, 917 F. Supp. 2d 394 (E.D. Pa. 2013) (No. 5:12-cv-06744-MSG) (asserting that "Plaintiff Elizabeth Hahn, is a shareholder of Plaintiff Conestoga and is a member of the Board of Directors"), *aff'd*, 724 F.3d 377 (3d Cir. 2013), *cert. granted*, 134 S. Ct. 678 (2013); Verified Compl. for Declaratory & Injunctive Relief at ¶ 15, *Feltl & Co. v. Sebelius*, No. 0:13-cv-02635-DWF-JJK (D. Minn. Sep. 25, 2013) (asserting that Plaintiff Mary Jo Feltl "is the grantor of the Mary Joanne Feltl JCF Trust, which is a minority owner of [Plaintiff Feltl and Company, Inc.]," and is also the President of Feltl and Company, Inc.); Verified Compl. at ¶¶ 2–4, *Armstrong v. Sebelius*, No. 1:13-cv-00563-RBJ (D. Colo. Sep. 17, 2013), 2013 WL 5213640 (describing plaintiffs, including Plaintiff Dorothy A. Shanahan), *appeal filed*, No. 13-1480 (10th Cir. Nov. 15, 2013); Verified Compl. at ¶¶ 6, 11, 13, *Trijicon, Inc.*

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[14] *Available at* http://www.becketfund.org/hhsinformationcentral/ (last visited Jan. 20, 2014).

v. Sebelius, No. 1:13-cv-01207-EGS (D.D.C. Aug. 5, 2013) (asserting that Plaintiffs Sharon Lycos and BethAnne Falkowski, along with other individual plaintiffs, are shareholders of Plaintiff Trijicon, Inc. and participate in the operation and management of the company); Compl. at ¶¶ 25, 31, *Mersino Mgmt. Co. v. Sebelius*, No. 2:13-cv-11296-PDB-RSW (E.D. Mich. Mar. 22, 2013) (asserting that "Plaintiff Mersino Management is [a] management company and provides the insurance for" companies including Mersino Southwest, LLC and Mersino Enterprises, Inc. and that "Plaintiff Karen A. Mersino is the owner and shareholder of . . Mersino Southwest, LLC and Mersino Enterprises, Inc."), *appeal filed*, No. 13-1944 (6th Cir. July 11, 2013); Compl. at ¶¶ 13-14, *Johnson Welded Prods., Inc. v. Sebelius*, No. 1:13-cv-00609-ESH (D.D.C. Apr. 30, 2013) (asserting that Plaintiff Lilli Johnson is "the mother of seven children," is "the President and majority owner of [Plaintiff Johnson Welded Products, Inc.]," and "makes the executive decisions governing the operations of [Plaintiff Johnson Welded Products, Inc.]"); Compl. for Declaratory & Injunctive Relief at ¶ 3, *Hartenbower v. U.S. Dep't of Health & Human Servs.*, No. 1:13-cv-02253 (N.D. Ill. Mar. 26, 2013) (asserting that Plaintiff Catherine Hartenbower and second individual plaintiff "together own a controlling interest in Plaintiff Hart Electric, LLC and Plaintiff H.I. Hart, LLC"); Compl. at ¶ 3, *Bick Holdings, Inc. v. U.S. Dep't of Health & Human Servs.*, No 4:13-cv-00462-AGF (E.D. Mo. Mar. 13, 2013) (naming Mary Frances Callahan, Mary Clare Bick, Mary Patricia Davies, Mary Margaret Jonz, and Mary Sarah Alexander as plaintiffs who, along with other individual plaintiffs, "own the controlling interest" in Plaintiff Bick Holdings, Inc. and its subsidiaries);

Compl. at ¶¶ 2, 4, *Yep v. U.S. Dep't of Health & Human Servs.*, No. 1:12-cv-06756 (N.D. Ill. Jan. 3, 2013) (asserting that Plaintiff Mary Anne Yep and another individual plaintiff "own and control the corporate plaintiff, Triune Health Group, Inc., an Illinois corporation"), *appeal filed*, No. 13-1478 (7th Cir. Mar. 5, 2013); First Am. Compl. at ¶ 3, *Geneva Coll. v. Sebelius*, 941 F. Supp. 2d 672 (W.D. Pa. May 31, 2012) (No. 2:12-cv-00207-JFC) (asserting that Plaintiff Carrie E. Kolesar and her father, along with other individuals, own Plaintiff Seneca Hardwood Lumber Company, Inc.), *appeal filed*, No. 13-2814 (3d Cir. June 17, 2013); Verified Compl. & Demand for Injunctive Relief at ¶ 18, *Autocam Corp. v. Sebelius*, No. 1:12-cv-01096-RJJ (W.D. Mich. Oct. 8, 2012), 2012 WL 6845677 (asserting that Plaintiff Margaret Kennedy is an owner of Plaintiff Autocam), *aff'd*, 730 F.3d 618 (6th Cir. 2013), *petition for cert. filed*, 82 U.S.L.W. 3245 (U.S. Oct. 15, 2013) (No. 13-482); First Am. Verified Compl. at ¶ 15, *Newland v. Sebelius*, 881 F. Supp. 2d 1287 (D. Colo. 2012) (No. 1:12-cv-1123-JLK) (asserting that Plaintiff Christine Ketterhagen "is a 25% shareholder of Plaintiff Hercules Industries, Inc." and "is one of the four members of the Board of Directors"), *aff'd*, No. 12-1380, 2013 WL 5481997 (10th Cir. Oct. 3, 2013); Compl. for Declaratory & Injunctive Relief at ¶ 3, *Korte v. U.S. Dep't of Health & Human Servs.*, 912 F. Supp. 2d 735 (S.D. Ill. 2012) (No. 3:12-CV-01072-MJR-PMF) (asserting that Plaintiff Jane E. Korte and a second individual plaintiff are "equal shareholders who together own a controlling interest in Plaintiff Korte & Luitjohan Contractors, Inc."), *rev'd sub nom.*, *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013); *see also* Class Action Compl. at ¶¶ 11–13, *Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Sebelius*, No. 1:13-

cv-02611-WJM-BNB (D. Colo. Sept. 24, 2013), 2013 WL 6839900 (describing two plaintiff *non-profit* corporations that "are controlled by and associated with the Little Sisters of the Poor, an international Congregation of Catholic Sisters"), *injunction pending appeal granted* (U.S. Jan. 24, 2014) (No. 13A691).

The federal court actions brought by these women—along with opposition by women to the Mandate more generally—demonstrates the flaw in describing the Mandate as a "pro-woman" or "gender equality" measure in any general sense of those terms.

C. The Mandate Benefits only Some, Not All, Women. The Court Should Avoid Characterizing the Mandate as a "Pro-Woman" or "Gender Equality" Measure in Any General Sense of those Terms.

The Court should resist characterizing the Mandate as a "pro-woman" or "gender equality" measure in any general sense of those terms. The Mandate advances the interests of only that subset of women who value free abortion drugs above public goods such as religious freedom and limited government. The Mandate works against the interests of those free-minded, independent women whose personal, moral, religious, or political values lead them to support a different balance of policy considerations. As demonstrated by the many female plaintiffs challenging the Mandate in federal courts, *see supra* at 15–18, the Mandate also works against the interests of those women who depend upon religious freedom to own or operate businesses in a way that is consistent with their own values.

Amici strongly resist any suggestion by the Government or others that women are a monolithic class of self-interested voters who universally value free abortion drugs more than religious freedom and limited government. *Amici* respectfully urge the Court, in analyzing the interests asserted by the Government for the Mandate: to accurately describe the limited class of individuals that purportedly benefit from the Mandate; to recognize that many women oppose the Mandate and in some cases are directly harmed by it; and to remember that not all women conform or desire to conform their beliefs, values, or actions to the Government's viewpoint on abortion and religious freedom.

CONCLUSION

The Court should protect religious freedom by ruling in favor of the nongovernment parties.

Respectfully submitted,

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January 28, 2014

APPENDIX

APPENDIX

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Appendix A: List of female state-level legislators and one executive official joining brief as a Coalition of State Legislative and Executive Branch Officials . . . . . App. 1

APPENDIX A

The female state-level legislators and one executive branch official who join this brief as a Coalition of State Legislative and Executive Branch Officials include the Honorable:

Sen. Elsie Arntzen (R-MT)
Del. Kathy Afzali (R-MD)
Rep. Nancy Ballance (R-MT)
Sen. Debby Barrett (R-MT)
Sen. Nancy Barto (R-AZ)
Rep. Joanne Blyton (R-MT)
Rep. Wanda Brown (R-MO)
Sen. Dee Brown (R-MT)
Rep. Christy Clark (R-MT)
Rep. Terri Collins (R-AL)
Rep. Debra Conrad (R-NC)
Rep. Jane Cormier (R-NH)
Sen. Margaret Dayton (R-UT)
Lt. Gov. Sue Ellspermann (R-IN)
Rep. Ellie Espling (R-ME)
Sen. Jennifer Fielder (R-MT)
Rep. Diane Franklin (R-MO)
Rep. Bette Grande (R-ND)
Rep. Stacey Guerin (R-ME)
Rep. Jenna Haggar (R-SD)
Rep. Kristin Hansen (R-MT)
Rep. Pat Hurley (R-NC)

Rep. Pat Ingraham(R-MT)
Rep. Stephanie Klick (R-TX)
Sen. Joyce Krawiec (R-NC)
Sen. Shantel Krebs (R-SD)
Rep. Sarah Laszloffy (R-MT)
Rep. Jodie Laubenberg (R-TX)
Sen. Mary Lazich (R-WI)
Rep. Donna Lichtenegger (R-MO)
Asm. Alison Littell McHose (R-NJ)
Rep. Melissa Magstadt (R-SD)
Del. Susan McComas (R-MD)
Rep. Pat McElraft (R-NC)
Rep. Donna Oberlander (R-PA)
Rep. Betty Olson (R-SD)
Rep. Lenette Peterson (R-NH)
Sen. Shirley Randleman (R-NC)
Rep. Kathy Rapp (R-PA)
Rep. Courtney Rogers (R-TN)
Rep. Lori Saine (R-CO)
Rep. Jacqueline Schaffer (R-NC)
Rep. Donna Sheldon (R-GA)
Sen Margaret Sitte (R-ND)
Del. Kathy Szeliga (R-MD)
Sen. Janna Taylor (R-MT)
Rep. Wendy Warburton (R-MT)
Sen. Kimberly Yee (R-AZ)